

In the Court of Appeals of the State of Alaska

Leroy Stansberry,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13291**

Order

Motion to Withdraw as Counsel for
Appellant

Date of Notice: **5/21/2019**

Trial Court Case No. **3AN-17-07947CI, 3AN-06-00477CR**

The Appellant, Leroy J. Stansberry, is currently represented at public expense by Fleur L. Roberts, an attorney contracting with the Office of Public Advocacy. Ms. Roberts has filed a motion on behalf of Mr. Stansberry asking this Court to allow her to withdraw from her representation in this case. It appears from Ms. Roberts's pleading that Mr. Stansberry wants to represent himself.

Mr. Stansberry may desire to represent himself in this case, but he has a constitutional right to counsel to assist him in the appeal. Unless and until he knowingly and intelligently waives that right, any legal proceedings in which he is not represented by counsel would be void. *See Johnson v. Zerbst*, 304 U.S. 458, 467-68; 58 S.Ct. 1019, 1024-25; 82 L.Ed. 1461 (1938) (holding that a deprivation of the right to counsel is equivalent to a lack of jurisdiction).

If Mr. Stansberry desires to represent himself, then the superior court must determine whether Mr. Stansberry is willing to enter a knowing and intelligent waiver of the right to counsel, and if so, whether he is capable of representing himself on appeal.

Accordingly, **IT IS ORDERED**:

1. Mr. Stansberry's case is **REMANDED** to the superior court to determine whether if Mr. Stansberry wishes to represent himself — rather than be represented by Ms. Roberts. The superior court shall conduct an inquiry to make sure that Mr. Stansberry understands the benefits of counsel and the dangers of representing himself, and to make sure that Mr. Stansberry is minimally competent to represent himself — *i.e.*, that he is capable of presenting a comprehensible argument on appeal.

2. As a suggestion, the superior court might advise Mr. Stansberry of the following aspects of litigating an appeal:

A criminal defendant who wishes to represent himself on appeal should bear in mind that an appellate court can not re-weigh the evidence or re-determine the facts of his case. Rather, an appellate court can only decide whether errors of law or mistakes of procedure were committed during the trial court proceedings. Because of this, it is important for a person who is pursuing an appeal to have a working knowledge of criminal law and criminal procedure, as well as good legal research skills, so that they can find the statutes and court decisions that apply to their case. Attorneys have specialized training and experience in these matters, so it is usually better to have an attorney's assistance when pursuing an appeal.

In addition, it helps to have good writing skills — because, in an appeal, a person's arguments are presented to the court primarily in written briefs.

Moreover, the rules governing an appeal are often technical. (For example, there is Appellate Rule 210(b)(1) — the rule that says that if a person wants the appellate court to have a transcript of what happened in the trial court, the person must designate the portions of the trial court proceedings to be transcribed.) Again, attorneys are generally familiar with these rules, or can discover them without much trouble, so it is usually

better to have an attorney's assistance.

3. If, after Mr. Stansberry is advised of the benefits of counsel and the dangers of self-representation, he still wishes to represent himself, and if the superior court concludes that Mr. Stansberry is at least minimally competent to do so, the superior court shall inform this Court of these circumstances. Mr. Stansberry will then be allowed to represent himself in this appeal.

4. If, on the other hand, Mr. Stansberry decides not to represent himself, or if the superior court concludes that Mr. Stansberry is not minimally competent to pursue this appeal on his own, then Ms. Roberts shall continue to represent Mr. Stansberry. The superior court shall inform this Court of these circumstances.

5. Because Mr. Stansberry has a constitutional right to the assistance of counsel on appeal, he must expressly and knowingly waive this right if he wishes to dismiss his court-appointed counsel and represent himself. Accordingly, if Mr. Stansberry is unable to make up his mind about whether to represent himself, this means that he has *not* waived his right to counsel, and Ms. Roberts shall continue to represent him in this appeal.

6. Mr. Stansberry may also desire, if he has the means, to hire a private attorney to represent him. If this is the case, then the superior court will give Mr. Stansberry 60 days to retain private counsel, and the superior court shall inform this Court of this circumstance.

7. The superior court's report on these matters shall be transmitted to this Court on or before **June 24, 2019**.

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May 21, 2019

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

Sarah Anderson, Deputy Clerk

cc: Judge D. Crosby
Anchorage Trial Court Clerk

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